



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534**

July 21, 2008

Ms. Carolyn Garretson
437 Wesley Chapel Road
Morrison, Tennessee 37357

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7004 2510 0002 4678 0002

Subject: DIRECTOR'S ORDER NO. 08-0147
CAROLYN GARRETSON D/B/A ROCKY RIVER STONE, INC. AND
DARRELL HILLIS
VAN BUREN COUNTY, TENNESSEE

Dear Ms. Garretson:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

If you or your attorney has questions concerning this correspondence, contact Jennifer Watson at (615) 532-0359.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:jaw

cc: DWPC – EFO-Cookeville
DWPC – Enforcement File
Office of General Counsel

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
CAROLYN GARRETSON D/B/A ROCKY)	DIVISION OF WATER
RIVER STONE AND DARRELL HILLIS)	POLLUTION CONTROL
)	
)	
RESPONDENTS)	CASE NUMBER WPC08-0147

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Carolyn Garretson is doing business as Rocky River Stone (hereinafter the "Respondent Garretson") and is conducting a sand, river rock, fieldstone, and boulder operation in Van Buren County, Tennessee. Service of process may be made on Respondent Garretson at 437 Wesley Chapel Road, Morrison, Tennessee 37357.

III.

Darrell Hillis (hereinafter the "Respondent Hillis") is a landowner who has leased his property in Van Buren County, Tennessee (hereinafter the "site") to Respondent Garretson to conduct a sand, gravel, river rock, fieldstone, and boulder operation. Service of process may be made on Respondent Hillis at 4807 Old Smithville Road, McMinnville, Tennessee 37110.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the "Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are "persons" as defined by T.C.A. §69-3-103(20) and as herein described, have violated the Act.

VI.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

Rocky River, described herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, Rocky River is classified for the following uses: industrial water supply, domestic water supply, fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Rocky River at river mile 9.0 to 13.0 downstream of the site is designated and classified as trout stream habitat. The Rocky River is listed as impaired for loss of biological integrity due to siltation and for pH and manganese due to abandoned mining. Upper Rocky River provides habitat for the federally listed fish, Slender Chub (*Erimystax cahni*) and the federally listed fish, Blue Mask Darter (*Etheostoma (Doration) sp.*), which has been located in Rocky River one mile downstream of the site.

FACTS

VIII.

During March 2008, the Cookeville Environmental Field Office (Ck-EFO), Division of Water Pollution Control received numerous complaints from state and federal agencies, including the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, Tennessee Wildlife Resources Agency, and Tennessee Valley Authority regarding water quality violations due to rock harvesting occurring in the Rocky River, Van Buren County, Tennessee.

IX.

On April 1, 2008, division personnel with Ck-EFO met Respondent Garretson on site to investigate the multiple complaints of rock harvesting from the channel of Rocky River in Van Buren County. Respondent Garretson stated that she was not the landowner, but leased the property from Respondent Hillis. At the time of the investigation, no equipment was seen working in the flowing portion of the river channel. However, heavy equipment tracks were noticed in the flowing portions of the river channel and baskets of stone were piled in the flowing water. It was noted that over the largest area of alteration, the riverbed had been routinely tilled to expose stones and the substrate of the river channel had been pushed into stockpiles along the riverbank in the river channel. Rock harvesting by hand was ongoing during the site visit.

The total length of the physical streambed and bank alteration was approximately 0.7 miles, beginning at the ford to enter the site, at approximately Rocky River Mile 14.5, and extending upstream to the confluence with Dyer Gulch Creek, approximately Rocky River Mile 15.2. The harvested stone was stored in close proximity to the river with no erosion protection and sediment controls (EPSCs) to prevent storm water from carrying sediment into the stream. Flow above the site was clear, but flow leaving the site was noticeably turbid. Division staff informed Respondent Garretson that a Notice of Violation (NOV) would be issued for operating without a permit and causing a condition of pollution to waters of the state.

X.

On April 11, 2008, Notices of Violation were mailed to both Respondent Hillis and Respondent Garretson. The division requested in both NOVs that each Respondent submit a written explanation of the activities and descriptions of the methods that will be used to remedy the violations.

XI.

On April 30, 2008, division personnel, along with Mary Ann Brannan with the U.S. Army Corps of Engineers (USACE) Regulatory Section and Respondent Garretson, conducted a follow-up inspection of the site. During the inspection, the division asked Ms. Garretson why she had not responded to the NOV. Respondent Garretson stated that she had received multiple copies of the Aquatic Resources Alteration Permit (ARAP) application provided by the division and was in the process of completing that application for submission.

During the site visit, division personnel observed that water was flowing through a portion of the worksite. A small skid-loader was seen working in the flowing portion of the river channel removing large boulders and loading them onto pallets. Rock harvesting by hand continued during the site visit. Heavy equipment tracks were again observed in the flowing portions of the river channel, and baskets of stone had been stockpiled in the flowing water. All other conditions were the same as documented on the April 1, 2008, site visit.

XII.

On May 5, 2008, Respondent Garretson submitted a written response to the NOV explaining that their activities consisted of picking up river rock by hand and placing them on pallets on flat ground around the dry river bed.

XIII.

On June 30, 2008, USACOE issued a letter requesting Respondent Hillis and Respondent Garretson to stop all work in waters of the U.S. and submit a written response within 15 days. The letter stated that the site inspection revealed that heavy equipment continued to be used to alter the contours of the original channel by pushing river bottom material up onto the banks along approximately 0.4 miles of the Rocky River on Respondent Hillis' property.

XIV.

In the course of investigating this matter the division incurred DAMAGES in the amount of FIVE HUNDRED AND FIVE DOLLARS AND FORTY CENTS (\$505.40).

VIOLATIONS

XV.

By physically altering waters of the state without authorization under an Aquatic Resources Alteration Permit (ARAP), the Respondents have violated T.C.A. §69-3-108(b)(1) and §69-3-114(b):

§69-3-108(b)(1) states:

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological,

biological or bacteriological properties of any waters of the state in any manner not already authorized.

§69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XVI.

By causing a condition of pollution to waters of the state as described herein, the Respondents have violated T.C.A. §69-3-114(a), which states:

(a) It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

T.C.A. §69-3-103(22) provides:

(22) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state including but not limited to changes in temperature, taste, color, turbidity, or odor of the waters:

- (A) As will result or will likely result in harm, potential harm or detriment of the public health, safety, or welfare;
- (B) As will result or will likely result in harm, potential harm or detriment of the health of animals, birds, fish or aquatic life;
- (C) As will render or will likely render the waters substantially less useful for domestic, municipal, industrial, recreational, or other reasonable uses; or
- (D) As will leave or will likely leave the waters in such condition as to violate any standards of water quality established by the board.

ORDER

XVII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent.

1. The Respondents shall, within 7 days of receipt of this ORDER and ASSESSMENT, establish effective EPSC measures such that sediment does not leave the site. This includes all areas where rock pallets are stockpiled and where heavy equipment and trucks are parked. These measures shall be chosen and installed in accordance with the Tennessee Erosion and Sediment Control Handbook. The Respondents shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Division of Water Pollution Control Manager located at the Cookeville Environmental Field Office, 1221 South Willow Avenue, Cookeville, Tennessee 38506.
2. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondents shall, within sixty (60) days of receipt of this ORDER and ASSESSMENT, submit for review a stream restoration plan for the impacted reach of Rocky River. The plan should also include information on monitoring of the restored channel. The restoration plan shall include a time schedule to identify proposed activity dates required to complete the work. These plans shall be submitted to the Division of

Water Pollution Control Manager located at the Cookeville Environmental Field Office at the address above and a copy mailed to the Manager of the Natural Resources Section, Division of Water Pollution Control, Tennessee Department of Environment and Conservation 401 Church Street, L&C Annex 7th Floor, Nashville, TN 37243-1534.

4. The Respondents shall, within thirty (30) days of written approval from the division, implement the stream restoration plan. This shall be confirmed in writing to the Division at the Cookeville Environmental Field Office.
5. The Respondents shall, within one hundred twenty (120) days of written approval from the division, complete the stream restoration plan. This shall be confirmed in writing to the Division at the Cookeville Environmental Field Office.
6. The Respondents shall submit to the division's Enforcement & Compliance Section, annual monitoring reports including, but not limited to, photo documentation and narrative description of tree and herbaceous vigor and survival/replacement rates and information on bank stability, shading and temperature. Reports will be due annually beginning January 31, 2009, and ending January 31, 2012.
7. The Respondents shall pay a CIVIL PENALTY of THIRTY THOUSAND DOLLARS (\$30,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of receipt of this ORDER and ASSESSMENT, pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00).

- b. If the Respondents fail to comply with Part XVII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.
- c. If the Respondents fail to comply with Part XVII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XVII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDRED (\$3,500.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XVII, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XVII, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00), payable within 30 days of default.
- g. If the Respondents fail to comply with Part XVII, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.

- h. The Respondents shall pay DAMAGES of FIVE HUNDRED AND FIVE DOLLARS AND FORTY CENTS (\$505.40) to the Department, hereby assessed, to be paid within thirty (30) days of receipt of this Order.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER and ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER and ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER and ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 21st day of July 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.